

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	CIVIL ACTION H-05-718
	§	
\$670,706.55 (SIX HUNDRED SEVENTY	§	
THOUSAND SEVEN HUNDRED SIX	§	
DOLLARS AND FIFTY CENTS, et al.,	§	
	§	
Defendants.	§	

OPINION AND ORDER

Pending before the Court is Rhonda Fleming's motion to proceed *in forma pauperis* on appeal (#96).

Under the Prison Litigation Reform Act, a prisoner may not bring a civil action *in forma pauperis* in federal court if, while incarcerated, three or more of her civil actions or appeals were dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g) (known as the "three strikes provision"); *Adegpegba v. Hammons*, 103 F.3d 383 (5th Cir. 1996); *Ruston v. Dallas County*, No. 3:04-CV-1690-M, 2004 WL 2100130, (N.D. Tex. Sept. 20, 2004). The only exception is if the prisoner alleges that she is in "imminent danger of serious physical injury." 28 U.S.C. § 1915(g); *Bano v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

Before filing this lawsuit, Fleming has had at least two

appeals and two suits dismissed as frivolous: *Fleming v. Ratliff*, Appeal No. 00-50342 (5th Cir.) (dismissed as frivolous on October 18, 2000); *Fleming v. Nance*, Appeal No. 00-50079 (5th Cir.) (dismissed as frivolous on August 24, 2000); *Fleming v. Ratliff*, 6-97:405 (W.D. Tex.) (dismissed as frivolous on August 24, 2000); *Fleming v. Nance*, 6:97-409 (W.D. Tex.) (dismissed as frivolous on January 20, 2000). Moreover, this Court recently dismissed her claim in the above referenced action to void her forfeiture because she failed to state a claim under 18 U.S.C. § 1346 and *Skilling v. United States*, 130 S. Ct. 2896 (2010), the order which she now seeks to appeal. Fleming has not alleged that she is in imminent danger of serious physical injury so the exception to the "three strikes" rule is inapplicable.

For these reasons, the Court

ORDERS that Fleming's motion to proceed *in forma pauperis* on appeal is DENIED.

SIGNED at Houston, Texas, this 9th day of December, 2010.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE